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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,392	03/19/2004	Soldano Ferrone	03551.0154	8143
26712	7590	05/04/2007		
HODGSON RUSS LLP THE GUARANTY BUILDING 140 PEARL STREET SUITE 100 BUFFALO, NY 14202-4040			EXAMINER VANDERVEGT, FRANCOIS P	
			ART UNIT 1644	PAPER NUMBER
			MAIL DATE 05/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,392

Applicant(s)

FERRONE ET AL.

Examiner

F. Pierre VanderVegt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 5-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 12 is/are rejected.
- 7) ☒ Claim(s) 2-4 and 13-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20040716</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This application claims the benefit of the filing date of provisional U.S. Application 60455,833.

Claims 1-17 are currently pending.

Election/Restrictions

1. Applicant's election of Group I, claims 1-4 and 12-17, in the reply filed on February 8, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 5-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 8, 2007.

Claims 1-4 and 12-17 are the subject of examination in the present Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevenson et al (J. Imm. Meth. [1986] 86:187-190; U on form PTO-892) as evidenced by Tutt et al (J. Immunol. [1983] 131(6):3058-3063).

Briefly, the claims are drawn to an isolated and purified peptide that binds to an anti-HLA class II antibody. Stevenson teaches an ELISA assay in which soluble HLA class II antigenic material is purified from the serum of human patients using immobilized rat anti-HLA class II antibodies (paragraph bridging pages 188-189 in particular). Accordingly, the soluble HLA class II antigenic material that is immobilized on the ELISA plates is isolated and purified from the patient sera. Stevenson further teaches the detection of the immobilized HLA class II on the plates with a mouse anti-HLA class II antibody (paragraph bridging pages 188-189 in particular). While Stevenson is silent about whether the soluble HLA class II antigenic material would block the binding of anti-HLA class II antibodies to HLA class II bearing cells, the antigenic material would have inherently been able to bind the two anti-HLA class II

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antibodies taught by Stevenson and prevent their binding to HLA class II-bearing cells in a sample and therefore satisfy the metes and bounds of the claims.

Claim 12 recites the additional limitation that the peptides are in an antigenic composition further comprising a "pharmaceutically acceptable carrier." Stevenson teaches that after incubation of the HLA class II antigenic material with the immobilized rat antibodies, the plates were washed (paragraph bridging pages 188-189 in particular). The wash buffer used by Stevenson is a carbonate buffer as evidenced by Tutt (Tutt, page 3058, column 2 in particular). Carbonate buffer is a water-based buffer and the water constitutes a "pharmaceutically acceptable carrier." The prior art teaching anticipates the claimed invention. The composition clearly constitutes an "antigenic composition" because the mouse anti-HLA class II antibodies are able to bind to the immobilized HLA class II material (Figure 1 in particular). The prior art teaching anticipates the claimed invention.

Conclusion

3. Claims 2-4 and 13-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Pierre VanderVegt whose telephone number is (571) 272-0852. The examiner can normally be reached on M-Th 6:30-4:00 and Alternate Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

F. Pierre VanderVegt, Ph.D.
Patent Examiner
April 27, 2007


DAVID A. SAUNDERS
PRIMARY EXAMINER